

### **REMARKS/ARGUMENTS**

Claims 1-6, 8-18, 20 and 22-29 are currently pending in this application. Claim 22 is withdrawn from consideration, claim 2 is objected to and claims 1, 3-18, 20, and 23-29 stand rejected. Claims 1, 4-6, 20, 24 and 29 have been amended, claims 2, 17, 23 and 26-28 have been cancelled without prejudice or disclaimer and claim 30 is new. Support for the amendments to the claims and the new claim can be found throughout the specification and in the claims as originally filed. For example, support the amendments to the claims can be found on page 3, lines 16-19. No new matter has been added by these amendments. Reconsideration and allowance of the claims is respectfully requested in view of the foregoing amendments and the following remarks.

### **REJECTION UNDER 35 U.S.C. § 112, FIRST PARAGRAPH.**

Claims 1, 3-18, 20, and 23-29 are rejected under 35 U.S.C. 112, first paragraph as allegedly failing to comply with the written description requirement as set forth on pages 2-5 of the Office Action. Specifically, the Examiner contends that while the specification has adequate written description of the promoter *kstD* from *R. erythropolis*, and the *kstR* gene of *R. erythropolis*, there is no disclosure on the structural limitations of the genus represented by the functional parts of the promoter, or homologues of the *kstR* gene, which identifies regions that must be maintained, or which may be varied and result in a functional molecule. While not acquiescing to the Examiner's rejection, and only to facilitate prosecution, Applicant has amended the claims 1, 4, 20 and 29 to specifically recite *Rhodococcus erythropolis*. Claims 3, 5, 6, 8-16, 18, 24 and 25 and new claim 30 are dependant either directly or indirectly on claim 1 or claim 4. Cancellation of claims 17, 23 and 26-28 without prejudice or disclaimer renders this rejection moot with respect to those claims. Accordingly, withdrawal of this ground of rejection is respectfully requested.

Claim 16 is also rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the enablement requirement. Specifically, the Examiner contends that the applicant has not stated that the deposit was made under the Budapest Treaty and therefore available to public upon issuance of the patent. In response, applicants submit that the bacterium *Rhodococcus erythropolis* RG10 had been deposited with the DSMZ-Deutsche Sammlung von

Mikroorganismen und Zellkulturen (a recognized depository) under accession number DSMZ 15231 on October 9, 2002 under the Budapest Treaty. As the deposit was made under the Budapest Treaty, *R. erythropolis* RG10 will be readily available to the public upon granting of the patent. Attached as Exhibit A are copies of the Receipt in Case of an Original Deposit and the Viability Statement for the DSMZ 15231 deposit. The Receipt and Statement both reference the deposit as having been made under the Budapest Treaty. Accordingly, withdrawal of this ground of rejection is respectfully requested.

### OBJECTION TO THE CLAIMS

Claim 2 is objected to is rejected as being dependant upon a rejected base claim. Cancellation of claim 2, without prejudice or disclaimer renders the Examiner's rejection with respect to that claim moot.

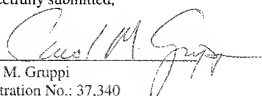
### CONCLUSION

If the undersigned can be of assistance to the Examiner, please contact the undersigned at the number set forth below. In the event the United States Patent and Trademark Office determines that other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to Deposit Account No. 50-4205, Reference Number: 2002.744US.

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